



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Electrospace Systems, Inc.
File: B-234006.2
Date: February 13, 1990

Stan Hinton, Esq., Doke & Riley, for the protester.
Rocco J. Maffei, Jr., Esq., for the interested party,
Control Data Corporation.
Gregory Petkoff, Esq., Office of the General Counsel,
Department of the Air Force, for the agency.
Scott Riback, Esq., and Michael R. Golden, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Agency properly awarded contract to low, technically acceptable offeror where protester's allegation that awardee's proposal fails to establish intent to comply with performance specifications is not supported by record.
2. Agency reasonably retained higher-priced offeror in the competitive range where only two offerors remained and acceptability of lower-priced offeror was not assured.

DECISION

Electrospace Systems, Inc. (ESI), protests the award of a contract to Control Data Corporation (CDC) under request for proposals (RFP) No. F09603-88-R-61660, issued by the Department of the Air Force for the acquisition of magnetic tape transport replacement (MTT-R) systems for the airborne warning and control system (AWACS) aircraft and related simulators and ground support centers. ESI argues that CDC did not submit a technically conforming offer. Thus, ESI argues that the Air Force improperly relaxed its minimum requirements without affording all offerors the opportunity to propose on the relaxed requirements. ESI further asserts that the Air Force did not conduct meaningful discussions because it failed to advise ESI that its offer was not priced competitively.

We deny the protest.

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The RFP's statement of work (SOW) called for the submission of firm, fixed-priced offers to replace the current magnetic tape transports with a magnetic tape cartridge, magnetic hard disk, or a combination of both. The SOW basically called for the design, development, fabrication, testing and production of a quantity of the MTT-R kits. The SOW required that the media assembly, a major component of the MTT-R, "shall be either a hermetically sealed hard disk drive, compact high density magnetic tape cartridge, or a combination of both." The SOW also made it clear that units must be designed in accordance with approved military methods and conform to the requirements contained in specified military standards regarding performance, reliability and maintainability. For example, it required under "Standard Parts" that "[t]echnical and electrical/electronic parts shall be selected from the government furnished baseline" and if non-standard parts are required, that non-standard part approval be obtained in accordance with a specific military standard 965. These military standards basically ensure that the required units are to be "ruggedized," that is, meet specific military standards for hardness and strength to permit operation in a rigorous military environment. Finally, the SOW, under "System Descriptions," provided a list of "Limiting Factors." This list included the provision that:

"The contractor shall minimize new development by making maximum use of commercially available off-the-shelf equipment to the extent possible within the requirements specified in the MTT-R performance specifications."

The RFP listed as evaluation factors, in descending order of importance: technical approach, price, logistics support and management. It listed subfactors for all factors except price. Award was to be made to the offeror receiving the highest total weighted score. The Air Force reserved the right to award to the lowest priced technically acceptable offeror.

In response to the RFP, three firms submitted offers. After initial evaluations, the Air Force concluded ESI and CDC were within the competitive range. Based on the initial evaluations, each offeror was provided a list of specific questions regarding weaknesses in its proposal. Further questions were sent to the offerors, and best and final offers (BAFOs) were requested and received. The proposals were reevaluated. CDC submitted the lowest price of \$6,593,911. ESI's total proposed price was \$28,757,167. CDC also was slightly higher scored on non-cost factors. Because of the significant difference in price between the

two offers, the contracting officer requested that both offerors check their prices for mistakes. Both offerors verified their proposals. A preaward survey was conducted at CDC and a complete award was recommended and subsequently made to that firm. This protest followed.

The protester first argues that the price offered by CDC was so much lower than its offer that either the firm must have offered a technically noncompliant product which was erroneously accepted by the Air Force or else the Air Force improperly relaxed the specifications in accepting the offer. Specifically, ESI argues that CDC must have offered either a commercial product or a "ruggedized" commercial product which, while it may have met the performance requirements of the specifications, did not meet the stringent militarization requirements of the RFP.

The Air Force responds that the product offered by CDC satisfied its requirements and that nowhere in the firm's offer did it take exception to any of the RFP's requirements. According to the Air Force, CDC offered an "innovative" solution to the RFP's requirements and this solution explains the dramatic difference in price between the two proposals. The Air Force further argues that to have advised ESI of CDC's proposed approach would have constituted improper technical transference in contravention of Federal Acquisition Regulation (FAR) § 15.610(d)(2) (FAC 84-16).

ESI's assertion that the agency accepted a nonconforming commercial product or else relaxed the specifications is based on its view that the RFP did not permit proposing the use of commercially available equipment. In support of its position, ESI directs our attention to various military specifications called out in the RFP which require that all parts and components utilized in the MTT-R units be selected from the "government furnished baseline" for standard parts and which require certain specific manufacturing and testing procedures in the construction and testing of the units. According to ESI, these extremely rigorous requirements result in there being a certain irreducible cost associated with the production of the units and that to allow the substitution of commercial or "ruggedized" commercial parts represents an impermissible deviation from the specifications. In further support of its allegation, ESI points out that at the preproposal conference its representatives queried the Air Force regarding a reference to "standard commercial parts" found in the RFP, since "standard military" parts and "commercial" parts are almost mutually exclusive. Apparently in response to ESI's inquiry, the word "commercial" was deleted from the RFP by

amendment, thereby indicating to it that only standard militarized parts could be used in constructing the MTT-Rs.

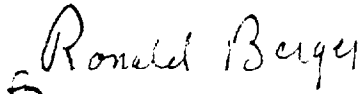
Contrary to ESI's position, we find that the RFP permitted firms to offer commercial equipment provided it met the performance specifications, including the requirements for military hardness and ruggedization. In this connection, ESI omits reference to the system description statement quoted above, that the contractor is to minimize new development by making maximum use of commercially available off-the-shelf equipment to the extent possible within the requirements specified in the MTT-R performance specifications. The SOW thus permitted use of commercial items which could meet the performance specifications. Moreover, while the agency deleted by amendment the term commercial from the heading "Standard Commercial Parts," we note that essentially all the specifications which the protester references are, as the protester concedes, performance type requirements, that is, they establish the requirements the item ultimately must meet. For example, the SOW provides that "the unit shall be designed in accordance with approved military methods . . . [and] shall conform to the requirements of MIL-E-5400, MIL-STD-454, and MIL-STD-462" Clearly, the RFP solicited the design and development of a product which would meet the stated needs, and the RFP permitted use of commercial equipment to the extent such equipment could ultimately be modified to meet all specification requirements. The RFP did not require offerors to propose an existing completely militarized product.

Regarding CDC's offer, our in camera review of CDC's proposal shows that it took no deviations or exceptions to the SOW. CDC agreed that its MTT-R would meet or exceed the RFP performance requirements. It basically proposed modifying and using an item already developed and in production for military use. CDC's proposal reasonably showed its capability to provide a fully militarized system with the appropriate hardened configuration which would operate in the AWACS environment. The Air Force in fact recognized that the awardee's approach could involve some modification of commercial products, but concluded that this could be accomplished within the parameters of the performance requirements. Based on this record, we have no reason to disturb the Air Force's determination that the awardee proposed a technically acceptable unit which would meet the SOW requirements. Thus, the belief that the Air Force relaxed or intends to relax its minimum requirements amounts to mere speculation which alone is insufficient to sustain a protest. EG&S Flow Technology, Inc., B-235830, Sept. 1, 1989, 89-2 CPD ¶ 211.

The protester also complains that the Air Force was aware that its price was significantly higher based on initial offers, and should have either discussed price with the firm or excluded it from the competitive range because it did not have a reasonable chance for award. The protester does not suggest that it could have underpriced the awardee, but questions the agency's decision to retain the firm in the competitive range. The record indicates that the Air Force considered its price reasonable for its technical approach, and the protester does not allege that its price was unreasonable for its approach.

Given that there were only two offerors in the competitive range that were acceptable and since discussions were required to resolve weaknesses in both proposals, we do not think it was unreasonable for the Air Force to continue to include the protester's potentially technically acceptable offer in the competition. In our view, the Air Force reasonably could not be certain that CDC's low offer would be found acceptable until after discussions, price verification and the pre-award survey.

We deny the protest.


James F. Hinchman
General Counsel